

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION**

**CASE NO. 22-14358-CIV-CANNON/McCabe**

**LEE ZONONI,**  
*individually and on behalf  
of all others similarly situated,*

Plaintiff,

v.

**CHW GROUP, INC,**  
*doing business as  
Choice Home Warranty,*

Defendant.

\_\_\_\_\_ /

**ORDER ACCEPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATIONS**

**THIS CAUSE** comes before the Court upon the following motions: (1) Defendant's Renewed Motion to Compel Arbitration and to Dismiss or, Alternatively, to Stay Case Pending Arbitration ("Renewed Motion to Compel") filed on October 2, 2023 [ECF No. 35], and (2) Defendant's Renewed Motion to Dismiss Plaintiff's First Amended Complaint ("Renewed Motion to Dismiss") filed on October 11, 2023 [ECF No. 44]. The Court referred both Motions to Magistrate Judge Ryon M. McCabe for a Report and Recommendation [ECF Nos. 46, 59]. Judge McCabe thereafter issued a Report ("Report") addressing both motions, recommending that the Renewed Motion to Compel be granted, that the case be dismissed without prejudice, and that the Renewed Motion to Dismiss be denied as moot [ECF No. 64]. The Report determines that, under the totality of the circumstances, Defendant did not waive its right to invoke the arbitration agreement [ECF No. 64 pp. 3–4]. The Report recommends that the dismissal be without prejudice to permit the parties to pursue this dispute in arbitration [ECF No. 64 p. 7].

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Following review, the Report [ECF No. 64] is **ACCEPTED**; Defendant's Renewed Motion to Compel is **GRANTED** [ECF No. 35]; Defendant's Renewed Motion to Dismiss [ECF No. 44] is **DENIED AS MOOT**; and this case is **DISMISSED WITHOUT PREJUDICE**.

### **LEGAL STANDARDS**

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See Fed. R. Civ. P.* 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1).

### **DISCUSSION**

The Court has conducted a *de novo* review of the Report [ECF No. 64], Plaintiff's Objections [ECF No. 65], and Defendant's Response to Plaintiff's Objections [ECF No. 66]. Upon such review, being fully advised in the premises, the Court finds the Report to be well reasoned and correct in its determination that, under the totality of the circumstances presented, and for purposes of determining waiver, the record does not reflect that Defendant knowingly relinquished the right to arbitrate by acting inconsistently with that right [ECF No. 64 pp. 4, 6].

Accordingly, it is **ORDERED and ADJUDGED** as follows:

1. The Report and Recommendation [ECF No. 64] is **ACCEPTED** in accordance with this Order.
2. Defendant's Renewed Motion to Compel [ECF No. 35] is **GRANTED**.
3. Defendant's Renewed Motion to Dismiss [ECF No. 44] is **DENIED AS MOOT**.

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4. This case is **DISMISSED WITHOUT PREJUDICE** to the parties.
5. Every **ninety (90) days** following the date of this Order, the parties are directed to **jointly** file status reports apprising the Court of the status of the dispute resolution process.
6. The Clerk of Court shall **CLOSE** this case for administrative purposes only. Any scheduled hearings are **CANCELED**, any pending motions are **DENIED AS MOOT**, and all deadlines are **TERMINATED**.

**DONE AND ORDERED** in Chambers at Fort Pierce, Florida this 4th day of January 2024.



AILEEN M. CANNON  
UNITED STATES DISTRICT JUDGE

cc: counsel of record